



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1630/FP

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Fri (cmh)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reynolds

AN ACT *to renumber and amend* 48.23 (2), 48.355 (2d) (c) and 938.355 (2d) (c);  
*to amend* 48.21 (5) (b) 3., 48.27 (3) (b) 2., 48.32 (1) (b) 2., 48.355 (2) (b) 6r., 48.355  
(2d) (b) (intro.), 48.357 (2v) (a) 3., 48.365 (2m) (a) 2., 48.415 (2) (a) 2. b., 48.415  
(2) (a) 3., 48.415 (3) (a), 48.415 (5) (a), 48.415 (8), 48.415 (9), 48.415 (9m) (a),  
48.415 (10) (a), 48.42 (2) (b) 3., 48.42 (2m) (a), 48.423 (1), 48.427 (7) (a) and (b),  
48.46 (1), (1m) and (2), 48.977 (2) (a), 48.977 (4) (b) 3., 938.21 (5) (b) 3., 938.32  
(1) (c) 2., 938.355 (2) (b) 6r. and (2d) (b) (intro.), 938.357 (2v) (a) 3. and 938.365  
(2m) (a) 2.; and *to create* 48.13 (14), 48.23 (2) (c) and (d), 48.355 (2d) (c) 1.,  
48.415 (9) (c), 809.10 (1) (b) 7., 809.107 (2) (bm) 6. and 938.355 (2d) (c) 1. and  
2. of the statutes; **relating to:** children in need of protection or services  
jurisdiction over, and grounds for involuntary termination of parental rights  
to a child under 3 years of age, whose parent had an involuntary termination  
of parental rights within the last 3 years, and was found to be in need of  
continued custody; involuntary termination of parental rights when child is in  
continuing need of protection or services; reasonable efforts by an agency to

APS: keep; only, not #5

1 return a child safely home when <sup>the</sup> a child <sup>to be</sup> or juvenile has been adjudged in need  
 2 of protection or services; requirements for further participation in an action to  
 3 terminate parental rights by a man alleged to be the child's father; revising  
 4 certain grounds for an involuntary termination of parental rights, ~~revising~~  
 5 ~~evidentiary requirements for certain grounds~~ <sup>and certain notice exceptions</sup> for an involuntary termination  
 6 of parental rights ~~and for certain notice exceptions~~ <sup>proceeding</sup> waiver of counsel for a  
 7 parent in a ~~proceeding~~ <sup>an</sup> for involuntary termination of parental rights or a  
 8 contested adoption; <sup>proceeding</sup> and requiring a parent's signature on a petition for  
 9 post<sup>proceeding</sup> dispositional relief or a notice of appeal. <sup>of a ~~subsequent~~ termination of parental rights order or a child in need of protection or services or paternity adjudication</sup>

### Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft. <sup>This bill is explained in the NOTES provided by the Joint Legislative Council in the bill. FE-SL</sup>

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This <sup>bill</sup> ~~draft~~ was prepared for the Joint <sup>Legislative</sup> ~~Legislation~~ Council's Special Committee on Permanency for Young Children in the Child Welfare System. <sup>three</sup>

#### Child in Need of Protection or Services (CHIPS) Petition and Subsequent Involuntary Termination of Parental Rights (TPR) Based Upon an Involuntary TPR Within the Prior 3 Years

Under current law, a court assigned to exercise jurisdiction under the Children's Code (juvenile court) has jurisdiction over a child who is alleged to be in need of protection or services. A juvenile court may issue an order to remove the child from the home and may order that services be provided if the child meets one of several specified conditions, including abuse or neglect of the child. <sup>an involuntary TPR</sup>

Also under current law, a petition for the involuntary TPR may be filed against a person, if within 3 years prior to the date of birth of the child a juvenile court <sup>has</sup> ~~had also~~ ordered the termination of parental rights with respect to another child of the person. <sup>to a child</sup>

The draft creates a new ground to file a CHIPS petition. The draft allows the juvenile court <sup>three</sup> ~~to have~~ jurisdiction over a child who is under 3 years of age whose parent <sup>has</sup> ~~had~~ his or her parental rights involuntarily terminated with respect to another child within 3 years prior to the child's date of birth, <sup>and</sup> a judge or circuit court commissioner at the temporary physical custody hearing has found that the child should be continued in custody if the parent has the right to counsel under s. 48.23 and had <sup>that</sup> ~~this~~ right during the proceeding under s. 48.21, unless <sup>states,</sup> ~~this~~ right has been knowingly and voluntarily <sup>states,</sup> ~~that~~

waived. The ~~draft~~ allows a TPR petition to be filed if a child ~~was~~ found to be in need of protection or services based upon the new CHIPS ground created under this ~~draft~~. The court must provide oral and written notification of this fact when entering an order terminating the parental rights of one or both parents ~~as to~~ a previous child. The ~~draft~~ also allows a juvenile court to appoint a guardian for a child adjudged to be in need of protection or services based upon the new CHIPS ground.

### Continuing Need of Protection or Services

Under current law, in order to terminate a person's parental rights, a court or a jury must find that one or more statutory grounds exist. One of the grounds under which an involuntary TPR may be filed is if a child is in continuing need of protection or services. This ground may be established by proving all of the following elements:

- The child has been adjudicated in need of protection or services (~~CHIPS~~) and continues to be placed outside the home under the CHIPS order.
- The responsible social services agency has made reasonable efforts to provide the services ordered by the court.
- The child has been placed outside the home for a cumulative total period of ~~on~~ six months or longer pursuant to the CHIPS order.
- The parent has failed to meet the conditions established for the safe return of the child to the home.

• There is a substantial likelihood that the parent will not meet the conditions established for the safe return of the child to the home within the next nine months after the TPR fact-finding hearing. (~~From the TPR ground of continuing CHIPS the ~~draft~~ that there~~)

This ~~draft~~ deletes the requirement of showing that the parent is substantially likely to continue to fail for the next nine months to meet the conditions for the safe return of the child to the home. However, the ~~draft~~ provides that if the child has been placed outside the home for less than 15 of the last 22 months, the petitioner must show that there is a substantial likelihood that the parent will not meet the conditions at the time the child will reach the 15th of the last 22 months of placement outside the home.

### Continuing Parental Disability

Under current law, a parent's continuing disability is a ground for involuntary TPR. This ground requires all of the following findings: (1) the parent is currently receiving inpatient treatment in a hospital or treatment facility for mental illness, developmental disability, or other like incapacity; (2) the parent has received inpatient treatment in one or more hospitals or treatment facilities for a cumulative total period of at least two of the last five years immediately prior to the filing of the TPR petition; (3) the parent's condition is likely to continue indefinitely; and (4) the child is not being provided with adequate care by a relative, parent, or guardian.

The ~~draft~~ revises the TPR ground of a continuing parental disability to require a parent to have had inpatient treatment history for at least 15 of the last 22 months prior to the filing of the TPR petition, rather than an inpatient history for at least two of the last five years.

### Parenthood as a Result of Sexual Assault

Under current law, a parent's commission of sexual assault that results in conception of a child is a ground for TPR. Conception as a result of sexual assault may be proven by a final judgment of conviction or other evidence produced at a fact-finding hearing showing that the person who may be the father committed sexual assault against the mother during a possible time of conception. The mother of the child must be afforded

apply that ground equally to a mother as well as a father who commits a sexual assault leading to the conception of a child

an opportunity to be heard on her desire for the termination of the father's parental rights.

This bill

The draft revises the TPR ground of conception as a result of sexual assault to equally apply to termination of a mother's or father's parental rights. The draft also specifies that the ground is inapplicable to a perpetrator of a nonviolent sexual assault of a minor, if the perpetrator was also a minor at the time of the assault with an age difference of within 4 years from the victim.

however bill, however,

and the

In addition, under current law, a court is not required to provide notice of a CHIPS or TPR action to a person who may be the father of a child conceived as a result of a sexual assault, if a physician attests to a belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

between the perpetrator and the victim is four years or less

This bill those eliminates those proof requirements from that notice exception

In the exceptions from providing notice of a CHIPS or TPR action to a person who may be the father, the draft removes the requirement for a physician's statement as to a belief that there was a sexual assault, and instead requires proof by a final judgment of conviction or other evidence. Under the draft, the exception to providing notice of a CHIPS or TPR action does not apply to a father who was under age 18 at the time of a nonviolent sexual assault of a minor, with an age difference that was within 4 years of the victim's age.

or if the father has been convicted of sexual assault for conduct leading to the conception of the child

of a sexual assault

bill, that notice exception

TPR --

### Pattern of Child Abuse; Homicide of Parent; and Felony Against a Child

Under current law, a parent's commission of one of certain egregious crimes is a ground for TPR. These include: (1) a parent who has subjected a child to a pattern of physically or sexually abusive behavior that is a substantial threat to the health of the child; (2) a parent who has committed homicide or solicitation to commit homicide of the other parent; or (3) a parent who has committed a serious felony against the person's own child or committed child trafficking against any child.

Each of these circumstances requires evidence of a final judgment of conviction for the crime. In order for a judgment of conviction to be considered as final under the law, the time for appeal must have expired, or, if appealed, all appeals directly challenging the parent's guilt must be exhausted.

committing

(homicide of a parent)

(child abuse)

crimes

exhibiting

soliciting the

(felony against a child)

grounds

This bill

The draft revises the TPR grounds of child abuse, homicide of a parent, and felony against a child to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

### Reasonable Efforts to Return a Child Safely Home

that reasonable efforts be made

federal

The Adoption and Safe Families Act of 1997 (ASFA) requires that reasonable efforts be made to preserve and reunify a family prior to a child's removal from the home, and, if removed from the home, to make it possible for the child's safe return to the home or to achieve any other goal of the child's permanency plan.

ASFA specifies that reasonable efforts "shall not be required" under certain egregious circumstances. These have been codified in Wisconsin law to specify that a court is not required to include a finding as to whether an agency has made reasonable efforts if a parent:

- Has subjected the child to aggravated circumstances, including torture, chronic abuse, sexual abuse, or felony abandonment of the child.
- Committed or attempted murder of the child's other parent.
- Committed an assault crime that resulted in great or substantial bodily harm to the child or another child of the parent.
- Had parental rights to another child involuntarily terminated.

a child is

juvenile

circumstances

- Has relinquished custody of the child within 72 hours of the child's birth.

Wisconsin law does not expressly prohibit a juvenile court from requiring a social service agency to make reasonable efforts in these circumstances, nor does the law specify a standard to evaluate when reasonable efforts may be required under these circumstances.

In addition, under Wisconsin law, when considering a TPR petition ~~under the ground that a child continues to be in need of protection or services~~, a number of elements must be found, including that a social services agency has made reasonable efforts to provide the services ordered by the court. No exception is made for the egregious circumstances under which reasonable efforts are not required.

This draft revises the requirements for a responsible agency to make reasonable efforts to return a child safely to the home as follows:

- Specifies that a court must determine that an agency is not required to make reasonable efforts to prevent a child from being removed from the home or to reunify the family if there are egregious circumstances under which reasonable efforts are not required, unless the court determines that such efforts would be in the best interests of the child.

- Specifies in the TPR ground based ~~upon a child's continuing need of protection or services~~ that the requirement for an agency to have made reasonable efforts to reunify the family is inapplicable for any period when reasonable efforts were not required due to the statutory egregious circumstances.

Because the Juvenile Justice Code contains parallel provisions to the Children's Code for holding a child or juvenile in custody, the draft revises the parallel provisions relating to reasonable efforts in both the Children's Code and the Juvenile Justice Code to make both codes consistent.

#### Waiver of Counsel; Parent's Signature

Under current law, in a proceeding involving TPR, or a contested adoption, a parent who appears before the juvenile court must be represented by counsel. A parent 18 years of age or over may waive counsel if the juvenile court is satisfied that the waiver is knowingly and voluntarily made. However, a parent under age 18 may not waive counsel.

Current law also provides that if an attorney represented a parent during a TPR proceeding, and has not been discharged, the representation continues during a TPR appeal.

The Wisconsin Supreme Court has strictly construed the statute requiring representation during an involuntary TPR proceeding in holding that an attorney may not be discharged from representing a parent who fails to cooperate with the court and the attorney. [*State v. Shirley E.*, 2006 WI 129; *State v. Darrell K.*, 2010 AP 1910 (Wis. Ct. App., Oct. 19, 2010, unpublished).]

The draft specifies that a parent 18 years of age or over who was ordered to appear in person at hearings for an involuntary TPR or contested adoption proceeding, but has failed to appear, is considered to have waived the right to counsel. A failure to appear by an adult parent must be egregious and without clear and justifiable excuse, which may be presumed from a parent's failure to appear at consecutive hearings.

The draft also requires a parent's signature, in addition to counsel's signature, on a notice of intent to appeal or notice of appeal from a TPR judgment, petition for rehearing from a CHIPS adjudication or TPR judgment, or motion for postdisposition relief from a CHIPS adjudication or TPR judgment.

### TPR Participation by Alleged Father

Under current law, an alleged father must be served with a TPR summons and petition. If paternity is then established during the TPR proceedings, the father may further participate in the proceedings.

In order for an alleged father to participate in the TPR proceedings after paternity has been established, at least one of the following must have occurred:

- The alleged father has filed a declaration of paternal interest upon the child's birth or upon receipt of the TPR petition, and the declaration has not been revoked.
- The mother (or other source) alleges the man to be the father.
- The man has lived in a familial relationship with the child and may be the father of the child.

This ~~draft~~ removes the right for a man who was alleged to be the father, and determined in the TPR proceedings to be the father, but who has not otherwise declared or established a relationship with the child, to further participate in the proceedings. Specifically, under the ~~draft~~, a man determined to be the father may further participate in a TPR proceeding only if the man ~~had~~ filed a declaration of paternal interest upon the child's birth or upon receipt of the TPR petition ~~that~~ has not been revoked, ~~had~~ established and maintained a familial relationship with the child, ~~or if the man~~ establishes that he has been deprived of the opportunity to assume parental responsibility for the child.

The ~~draft~~ retains the requirement to ~~serve~~ an alleged father with a summons and petition for the TPR action, regardless of whether the alleged father has declared or established and maintained a familial relationship with the child.

1 AR ~~Pikachu~~ → SECTION 1. 48.13 (14) of the statutes is created to read:

- 2 48.13 (14) Who is less than 3 years of age, whose parent, within 3 years prior
- 3 to the date of ~~the~~ birth of the child had his or her parental rights to another child
- 4 involuntarily terminated by a court, and a judge or circuit court commissioner has
- 5 found that the child should be continued in custody under s. 48.21 (4) if the parent
- 6 has the right to counsel under s. 48.23 and had this right during the proceeding under
- 7 s. 48.21, unless this right has been knowingly and voluntarily waived.

NOTE: This SECTION creates a new ground in which the juvenile court has jurisdiction over a child in need of protection or services. The ground gives jurisdiction over a child who is under 3 years of age, whose parent has had his or her parental rights to another child involuntarily terminated within the last 3 years, the parent has the right to counsel under s. 48.23, unless this right has been knowingly and voluntarily waived; and at the temporary physical custody hearing, a judge or circuit court commissioner has found the child to be in need of continued custody. In order for a court to have jurisdiction over a child under this new CHIPS ground, the juvenile court must first hold a temporary physical custody hearing regarding the child and find that the child should be continued in custody, and the parent must have had the right to counsel at this proceeding, unless it was knowingly and voluntarily waived.

if a judge or circuit court commissioner has found that the child should be continued in custody under s. 48.21 (4) and if that parent has the right to counsel under s. 48.23 and had that right during the proceeding under s. 48.21

1           **SECTION 2.** 48.21 (5) (b) 3. of the statutes is amended to read:

2           48.21 (5) (b) 3. If the judge or circuit court commissioner finds that any of the  
3           circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,  
4           ~~the order shall include~~ a determination that the county department, department, in  
5           a county having a population of 500,000 or more, or agency primarily responsible for  
6           providing services under the custody order is not required to make reasonable efforts  
7           with respect to the parent to make it possible for the child to return safely to his or  
8           her home, unless the judge or circuit court commissioner determines or has  
9           determined under a prior order that such efforts would be in the best interests of the  
10          child.

NOTE: This SECTION specifies that at a ~~temporary physical custody~~ <sup>the</sup> hearing <sup>IPC</sup> for a child alleged to be in need of protection or services, a juvenile court must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

11          **SECTION 3.** 48.23 (2) of the statutes is renumbered 48.23 (2) (a) and amended  
12          to read:

13          48.23 (2) ~~RIGHT OF PARENTS~~ PARENT TO COUNSEL. (a) Whenever a child is the  
14          subject of a proceeding involving a contested adoption or ~~the~~ an involuntary  
15          termination of parental rights, any parent under 18 years of age who appears before  
16          the court shall be represented by counsel; ~~but~~ and no such parent may waive counsel.  
17          Except as provided in sub. (2g), a minor parent petitioning for the voluntary  
18          termination of parental rights shall be represented by a guardian ad litem. If

19          (b) In a proceeding ~~involves~~ involving a contested adoption or the an  
20          involuntary termination of parental rights, any parent 18 years <sup>of age</sup> ~~old~~ or older who  
21          appears before the court shall be represented by counsel; ~~but the parent may waive~~

~~that counsel may be waived~~  
 1 counsel provided the court is satisfied such waiver is knowingly and voluntarily  
 2 made, except as provided in par. (c).

NOTE: This SECTION separates the current language governing the right to counsel between a minor parent and a parent 18 years of age or over, and makes the right to counsel for an adult parent subject to a waiver ~~of counsel~~ by an egregious and unjustifiable failure to appear.

3 **SECTION 4.** 48.23 (2) (c) and (d) of the statutes are created to read:

4 48.23 (2) (c) A waiver of counsel may be waived as follows:

5 1. Notwithstanding pars. (b) and (d), A parent 18 years of age or over may waive  
 6 counsel if the court is satisfied that the waiver is knowingly and voluntarily made.

7 2. Notwithstanding par. (b), a parent 18 years of age or over is presumed to have  
 8 waived his or her right to counsel and to appear by counsel if the court has ordered  
 9 the parent to appear in person at any or all subsequent hearings in the proceeding,  
 10 the parent fails to appear in person as ordered, and the court finds that the parent's  
 11 conduct in failing to appear was egregious and without clear and justifiable excuse.  
 12 Failure by a parent 18 years of age or over to appear in person at consecutive hearings  
 13 as ordered by the court is presumed to be egregious and without clear and justifiable  
 14 excuse.

15 3. If a parent 18 years of age or over waives counsel under this paragraph, the  
 16 court may discharge counsel. that counsel may be waived

17 (d) In a proceeding to vacate a default judgment or for reconsideration of a  
 18 default judgment terminating parental rights, a parent who had waived counsel  
 19 shall be represented by counsel, except as provided in par. (c) 1 or 2.

who  
 NOTE: This SECTION provides that a parent 18 years of age or over who was ordered to appear in person at hearings for an involuntary TPR or contested adoption proceeding, but has failed to appear, is considered to have waived the right to counsel, if the juvenile court finds that the parent's conduct in failing to appear was egregious and without clear and justifiable excuse. The ~~draft~~ provides that consecutive failures by an adult parent to appear are presumed to be egregious and without clear and justifiable excuse. The



<sup>b.11</sup>  
~~draft~~ also provides that a right to counsel is reinstated for a motion to vacate or reconsider a default TPR judgment, if counsel was waived during the ~~default~~ TPR.

proceeding in which the parent defaulted

**SECTION 5.** 48.27<sup>✓</sup> (3) (b) 2. of the statutes is amended to read:

48.27 (3) (b) 2. A court is not required to provide notice, under subd. 1., to any

person who may be the father of a child conceived as a result of a sexual assault if

a physician attests to his or her belief that there was <sup>plain</sup> ~~a~~ sexual assault of the child's

mother that may have resulted in the child's conception is proved by a final judgment

of conviction or other evidence. A person who is not given notice under this

subdivision does not have standing to appear and contest a petition under s. 48.13

or 48.133, present evidence relevant to the issue of disposition, or make alternative

dispositional recommendations. This subdivision does not apply to a person who may

be the father of a child conceived as a result of a sexual assault under s. 948.02 (1)

(b) or (e) <sup>✓</sup> or (2) <sup>✓</sup> or 948.09, if that person was under 18 years of age at the time of the

sexual assault <sup>(and)</sup> was not more than 4 years older <sup>not more than</sup> on 4 years younger than the victim <sup>✓</sup>

and <sup>if</sup> the assault did not involve the use or threat of force or violence. <sup>that a physician attest</sup>

NOTE: This SECTION, however, requires <sup>from</sup> ~~for~~ a physician's statement as to a belief that there was a sexual assault, <sup>of the child</sup> ~~in~~ the exception from providing notice of a CHIPS <sup>proceeding</sup> ~~action~~ to a person who may be the father, and instead requires proof by a final judgment of conviction or other evidence. Notice of a CHIPS <sup>of a sexual assault</sup> ~~action~~ <sup>if the</sup> must be given to a father who was under age 18 at the time of a nonviolent sexual assault, of a minor with an age difference <sup>between the perpetrator and the victim is</sup> ~~that was within 4 years of the victim's age~~ <sup>four years or less</sup>

**SECTION 6.** 48.32<sup>✓</sup> (1) (b) 2. of the statutes is amended to read:

48.32 (1) (b) 2. If the judge or circuit court commissioner finds that any of the

circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,

the consent decree shall include a determination that the county department,

department, in a county having a population of 500,000 or more, or agency primarily

responsible for providing services under the consent decree is not required to make

reasonable efforts with respect to the parent to make it possible for the child to return

1 safely to his or her home, unless the judge or circuit court commissioner determines  
2 or has determined under a prior order that such efforts would be in the best interests  
3 of the child.

NOTE: This SECTION specifies that in a CHIPS consent decree <sup>the juvenile</sup> a court must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

4 **SECTION 7.** 48.355 (2) (b) 6r. of the statutes is amended to read:

5 48.355 (2) (b) 6r. If the court finds that any of the circumstances specified in  
6 sub. (2d) (b) 1. to 5. applies with respect to a parent, ~~the order shall include~~ a  
7 determination that the county department, department, in a county having a  
8 population of 500,000 or more, or agency primarily responsible for providing services  
9 under the court order is not required to make reasonable efforts with respect to the  
10 parent to make it possible for the child to return safely to his or her home, unless the  
11 court determines or has determined under a prior order that such efforts would be  
12 in the best interests of the child.

<sup>the juvenile</sup> NOTE: This SECTION specifies that in ~~the written contents of~~ a CHIPS dispositional order a court must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

13 **SECTION 8.** 48.355 (2d) (b) (intro.) of the statutes is amended to read:

14 48.355 (2d) (b) (intro.) ~~Notwithstanding sub. (2) (b) 6., the court is not required~~  
15 <sup>shall</sup> ~~to include in a dispositional order a finding as to whether~~ determination that the  
16 county department, the department, in a county having a population of 500,000 or  
17 more, or the agency primarily responsible for providing services under a court order  
18 has made is not required to make reasonable efforts with respect to a parent of a child  
19 to prevent the removal of the child from the home, <sup>the</sup> ~~while assuring that the child's~~  
20 ~~health and safety are the paramount concerns, or a finding as to whether the county~~

① ~~department, department, or agency has made~~ <sup>or</sup> ~~reasonable efforts with respect to~~  
 2 ~~a parent of a child~~ to achieve the permanency goal of returning the child safely to his  
 3 or her home, unless the court determines or has determined under a prior order that  
 4 such efforts would be in the best interests of the child, if the court finds any of the  
 5 following:

NOTE: This SECTION specifies that in a CHIPS dispositional order a court must determine that an agency was not required to make reasonable efforts to prevent a child's removal or return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts ~~would be~~ in the best interests of the child.

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6 SECTION 9. 48.355 (2d) (c) of the statutes is renumbered 48.355 (2d) (c) (intro.)  
 7 and amended to read:

8 48.355 (2d) (c) If the court finds that any of the circumstances specified in par.

9 (b) 1. to 5. applies with respect to a parent, the court shall ~~hold~~ do all of the following:

10 2. Hold a hearing under s. 48.38 (4m) within 30 days after the date of that  
 11 finding to determine the permanency goal and, if applicable, any concurrent  
 12 permanency goals for the child.

13 SECTION 10. 48.355 (2d) (c) 1. of the statutes is created to read:

14 48.355 (2d) (c) 1. Include in the order a determination that the person or agency  
 15 primarily responsible for providing services to the child is not required to make  
 16 reasonable efforts with respect to the parent to make it possible for the child to return  
 17 safely to his or her home, unless the court determines that such efforts would be in  
 18 the best interests of the child.

NOTE: SECTIONS 9 and 10 specify that a court must include in the CHIPS dispositional order a determination that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

19 SECTION 11. 48.357 (2v) (a) 3. of the statutes is amended to read:

1 48.357 (2v) (a) 3. If the court finds that any of the circumstances specified in  
2 s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, ~~the order shall include~~ a  
3 determination that the agency primarily responsible for providing services under the  
4 change in placement order is not required to make reasonable efforts with respect  
5 to the parent to make it possible for the child to return safely to his or her home,  
6 unless the court determines or has determined under a prior order that such efforts  
7 would be in the best interests of the child. CHSPS § 9

NOTE: This SECTION specifies that in a change in placement from a CHIPS <sup>the juvenile</sup> dispositional order a court must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines <sup>would be</sup> that such efforts were in the best interests of the child.

8 SECTION 12. 48.365 (2m) (a) 2. of the statutes is amended to read:

9 48.365 (2m) (a) 2. If the judge finds that any of the circumstances specified in  
10 s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the order shall include a  
11 determination that the person or agency primarily responsible for providing services  
12 to the child is not required to make reasonable efforts with respect to the parent to  
13 make it possible for the child to return safely to his or her home, unless the judge  
14 determines or has determined under a prior order that such efforts would be in the  
15 best interests of the child.

NOTE: This SECTION specifies that in extending a CHIPS dispositional order, <sup>extension</sup> a court <sup>the juvenile</sup> must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

16 SECTION 13. 48.415 (2) (a) 2. b. of the statutes is amended to read:

17 48.415 (2) (a) 2. b. That the agency responsible for the care of the child and the  
18 family or of the unborn child and expectant mother has made a reasonable effort to  
19 provide the services ordered by the court, excluding any period during which the  
20 responsible agency was not required under s. 48.355 (2) (b) 6r., 48.357 (2v) (a) 3.,

48.365 (2m) (a) 2.,

CHIPS, the requirement that  
reasonable efforts have been  
made to provide the services ordered by

or 938.365 (2m)(4)2.

938.355 (2) (b) 6r., ~~or~~ 938.357 (2v) (a) 3. to make reasonable efforts with respect to  
a parent to make it possible for the child to return safely to his or her home.

NOTE: This SECTION specifies that, for the TPR ground of a child's continuing need  
of protection or services, reasonable efforts for the safe return of the child is inapplicable  
for any period when reasonable efforts for reunification were not required by the court.

SECTION 14. 48.415 (2) (a) 3. of the statutes is amended to read:

48.415 (2) (a) 3. That the child has been outside the home for a cumulative total  
period of 6 months or longer pursuant to such orders not including time spent outside  
the home as an unborn child; ~~and~~ that the parent has failed to meet the conditions  
established for the safe return of the child to the home ~~and there is a substantial~~  
likelihood that the parent will not meet these conditions within the 9-month period  
following the fact-finding hearing under s. 48.424; and, if the child has been placed  
outside of his or her home for less than 15 of the last 22 months, that there is a  
substantial likelihood that the parent will not meet these conditions as of the date  
the child has been placed outside of his or her home pursuant to such orders for 15  
of the most recent 22 months, not including any period during which the child was  
a runaway from the out-of-home placement or was residing in a trial reunification  
home.

NOTE: This SECTION revises the continuing CHIPS ground for involuntary TPR to  
eliminate the requirement to show that a parent is substantially likely to not meet the  
conditions for the safe return of the child within the next 9 months following the  
fact-finding hearing. If, however, the child has been placed outside the home for less than  
15 of the last 22 months, the petitioner must show that there is a substantial likelihood  
that the parent will not meet the conditions at the time the child will reach the 15th of  
the last 22 months of placement outside the home.

SECTION 15. 48.415 (3) (a) of the statutes is amended to read:

48.415 (3) (a) The parent is presently, and for a cumulative total period of at  
least 2 years 15 months within the ~~5 years~~ 22 months immediately prior to the filing  
of the petition has been, an inpatient at one or more hospitals <sup>(2)</sup> as defined in s. 50.33  
(2) (a), (b) or (c), licensed approved treatment facilities <sup>(1)</sup> as defined in s. 51.01 (2), or

(plan)

leave  
scored

state treatment facilities<sup>2</sup> as defined in s. 51.01 (15)<sup>2</sup> on account of mental illness<sup>2</sup> as defined in s. 51.01 (13) (a) or (b), developmental disability<sup>2</sup> as defined in s. 55.01 (2), or other like incapacities, as defined in s. 55.01 (5);<sup>five</sup> <sup>on</sup> <sup>treatment</sup>

NOTE: This SECTION revises the TPR ground of a continuing parental disability to require a parent to have had inpatient treatment history for at least 15 of the last 22 months prior to the filing of the TPR petition, rather than an inpatient history for at least 3 of the last 5 years. This SECTION also corrects the terminology for an "approved treatment facility" as used in the statutes.

SECTION 16. 48.415 (5) (a) of the statutes is amended to read:

48.415 (5) (a) That the parent has caused death or injury to a child or children resulting in a <sup>which</sup> ~~that~~ may be proved by a final judgment of felony conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person caused the death or injury.

NOTE: This SECTION revises the TPR ground of a pattern of child abuse to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

SECTION 17. 48.415 (8) of the statutes is amended to read:

48.415 (8) HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02<sup>2</sup> or 2nd-degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of committed that intentional or reckless homicide, solicitation<sup>2</sup> or crime under ~~the laws of this state~~ federal law<sup>2</sup> or the law of

any other state as evidenced by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person committed or solicited homicide of a parent as described in this subsection.

NOTE: This SECTION revises the TPR ground of homicide, or a solicitation to commit homicide, of the child's other parent to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

SECTION 18. 48.415 (9) <sup>(a)</sup> of the statutes is amended to read:

48.415 (9) ~~PARENTHOOD AS A RESULT OF SEXUAL ASSAULT.~~ (a) Parenthood Except as provided in par. (c), parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), <sup>(2)</sup> ~~(2)~~ or (3), 948.02 (1) or (2), 948.025, or 948.085. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the ~~person who may be the father~~ parent of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the ~~mother~~ other parent of the child.

48.415 <sup>(b)</sup> (9)(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) or 948.085, the ~~mother of the child~~ parent who was the victim of the sexual assault may be heard on his or her desire for the termination of the ~~father's~~ other person's parental rights.

*apply that ground equally to a mother, as well as a father who commits a sexual assault leading to the conception of a child*

NOTE: This SECTION revises the TPR ground of conception as a result of sexual assault to ~~equally apply to termination of a mother's or father's parental rights~~, rather than referring only to the father as the perpetrator. This SECTION also specifies that a court must allow either a mother or father who was a victim of sexual assault of a minor, or victim of sexual assault of a minor by an out-of-home care provider, to be heard on his or her desires regarding the TPR of the other parent, rather than allowing only a mother, as a victim, to be heard.

SECTION 19. 48.415 (9) (c) of the statutes is created to read:

1 48.415 (9) (c) This subsection does not apply to a parent who committed sexual  
2 assault under s. 948.02 (1) (b) or (e) or (2) or 948.09, if that person was under 18  
3 years of age at the time of the sexual assault <sup>and</sup> was not more than 4 years older or <sup>not more than</sup> 4  
4 years younger than the victim, <sup>if</sup> and the assault did not involve the use or threat of  
5 force or violence. the age difference between the perpetrator and the victim is 13 four years or less

NOTE: This SECTION specifies that the TPR ground of conception as a result of sexual assault is inapplicable to a perpetrator of a non-violent sexual assault of a minor, if the perpetrator was also a minor at the time of the assault and was within 4 years of age difference from the victim.

6 SECTION 20. 48.415 (9m) (a) of the statutes is amended to read:

7 48.415 (9m) (a) Commission of a serious felony against one of the person's  
8 children, which shall be established by proving that a child of the person whose  
9 parental rights are sought to be terminated was the victim of a serious felony and  
10 that the person whose parental rights are sought to be terminated has been convicted  
11 of committed that serious felony as evidenced by a final judgment of conviction or  
12 other evidence produced at a fact-finding hearing under s. 48.424 indicating that the  
13 person committed a serious felony against one of the person's children.

NOTE: This SECTION revises the TPR ground of felony against a child to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

14 SECTION 21. 48.415 (10) (a) of the statutes is amended to read:

15 48.415 (10) (a) That the child who is the subject of the petition has been  
16 adjudged to be in need of protection or services under s. 48.13 (2), (3) ~~or~~, (10), or (14);  
17 or that the child who is the subject of the petition was born after the filing of a petition  
18 under this subsection whose subject is a sibling of the child.

NOTE: This SECTION allows a TPR petition to be filed if the parent's child was found to be in need of protection or services based on the new CHIPS ground created under SECTION <sup>1</sup> ← use AR pikachu (from pg. 6)

19 SECTION 22. 48.42 (2) (b) 3. of the statutes is amended to read:



48.42 (2) (b) 3. A person who has lived in established and maintained a familial relationship with the child and who may be the father of the child.

NOTE: This SECTION specifies that in order for an alleged father to be summoned for a TPR proceeding, one method of protecting that right is by having established and maintained a familial relationship with the child, even if the alleged father had not lived with the child.

SECTION 23. 48.42 (2m) (a) of the statutes is amended to read:

48.42 (2m) (a) *Parent as a result of sexual assault.* Except as provided in this paragraph, notice is not required to be given to a person who may be the father of a child <sup>(16)</sup> ~~conceived as a result of~~ <sup>of the child's mother</sup> a sexual assault <sup>(2)</sup> in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085 if a physician attests to his or her belief that a sexual assault as specified in this paragraph has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this paragraph for conduct which may have led to the child's conception that may be proved by a final judgment of conviction or other evidence. A person who under this paragraph is not given notice does not have standing to appear and contest a petition for the termination of his parental rights, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations. This paragraph does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of under s. 948.02 (1) (b) or (e) or (2) or 948.09, if that person was under 18 years of age at the time of the sexual assault <sup>and</sup> was not more than 4 years older or 4 years younger than the victim, and the assault did not involve the use or threat of force or violence.

NOTE: This SECTION removes the requirement for a physician's statement to a belief that there was a sexual assault <sup>from</sup> ~~and~~ the exception from providing notice of a TPR proceeding to a person who may be the father, and instead requires proof by a final judgment of conviction or other evidence. <sup>of the child of a TPR proceeding to</sup> It also specifies that notice <sup>that a physician attest</sup> must be given to a perpetrator of a nonviolent sexual assault of a minor, if the perpetrator was also a minor at the time of the sexual assault with an age difference that was within 4 years of the victim's age.

SECTION 24. 48.423 (1) of the statutes is amended to read:

This SECTION, however, requires

between the perpetrator and the victim is four years or less four

proceeding  
father who was  
under 18 years of age  
at the time

48.423 (1) RIGHTS TO PATERNITY DETERMINATION. If a person appears at the hearing and claims that he is the father of the child, the court shall set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the person claiming to be the father of the child of any right to counsel under s. 48.23. The person claiming to be the father of the child must prove paternity by clear and convincing evidence. A person who establishes his paternity of the child under this section may further participate in the termination of parental rights proceeding only if the person meets the conditions specified in sub. (2) or, meets a condition specified in s. 48.42 (2) (b) 1. or 3. or (bm), or establishes that he has been deprived of the opportunity to assume parental responsibility for the child.

*filed a declaration of parental interest*  
NOTE: This SECTION removes the right of a man alleged to be the father, who has not otherwise declared or established and maintained a familial relationship with the child, to further participate in a TPR proceeding after his paternity has been determined, unless he establishes that he has been deprived of the opportunity to assume parental responsibility for the child. *if a child*

*to a* SECTION 25. 48.427 (7) *(15)* ~~(a) and (b)~~ of the statutes ~~are~~ amended to read:

48.427 (7) (a) If an order is entered under sub. (3), the court may orally inform the parent or parents who appear in court of the ground for termination of parental rights specified in s. 48.415 (10), except that the court shall orally inform the parent or parents of the ground for termination of parental rights specified in s. 48.415 (10)

*17* (a) ~~the~~ *with respect to* child who has been adjudged to be in need of protection or services under s. 48.13 (14).

(b) In addition to the notice permitted under par. (a), any written order under sub. (3) may notify the parent or parents of the information specified in par. (a), except that the court shall provide written notification to the parent or parents of the

ground for termination of parental rights specified in s. 48.415 (10) (a) of a child who  
has been adjudged to be in need of protection or services under s. 48.13 (14).

NOTE: This SECTION requires that the court, when entering an order terminating the parental rights as to one or both parents, must provide oral and written notification to the parent or parents of the fact that this TPR order may be used to terminate the parental rights of another child of the parent or parents, born within the 3 years following the date of the TPR, if the child is found to be in need of protection or services under the new CHIPS ground created under SECTION 1 of this draft. *use AR pikachu*

SECTION 26. 48.46 (1), (1m) and (2) of the statutes are amended to read:

48.46 (1) Except as provided in subs. (1m), (2) and (3), the child whose status is adjudicated by the court, the parent, guardian or legal custodian of that child, the unborn child whose status is adjudicated by the court or the expectant mother of that unborn child may at any time within one year after the <sup>entry</sup> entering of the court's order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. Notwithstanding s. 802.05 (1), a petition by a parent under this subsection shall be signed by the parent and by the parent's attorney of record, if any.

(1m) Except as provided in sub. (2), the parent, guardian or legal custodian of the child or the child whose status is adjudicated by the court in an order entered under s. 48.43 or an order adjudicating paternity under subch. VIII may, within the time permitted under this subsection, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. A petition under this subsection shall be filed within one year after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, unless within that one-year period a court in this state or in another jurisdiction enters an order granting adoption of the child, in which case a petition

1 under this subsection shall be filed before the date on which the order granting  
2 adoption is entered or within 30 days after the date on which the order under s. 48.43  
3 or order adjudicating paternity under subch. VIII is entered, whichever is later.  
4 Notwithstanding s. 802.05 (1), a petition by a parent under this subsection shall be  
5 signed by the parent, and by the parent's attorney of record, if any.

6 (2) A parent who has consented to the termination of his or her parental rights  
7 under s. 48.41 or who did not contest the petition initiating the proceeding in which  
8 his or her parental rights were terminated may move the court for relief from the  
9 judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) <sup>(2)</sup> or (f).  
10 Notwithstanding s. 802.05 (1), a motion by a parent under this subsection shall be  
11 signed by the parent, and by the parent's attorney of record, if any. Any such motion  
12 shall be filed within 30 days after the entry of the judgment or order terminating  
13 parental rights, unless the parent files a timely notice of intent to pursue relief from  
14 the judgment under s. 808.04 (7m), in which case the motion shall be filed within the  
15 time permitted by s. 809.107 (5). A motion under this subsection does not affect the  
16 finality or suspend the operation of the judgment or order terminating parental  
17 rights. A parent who has consented to the termination of his or her parental rights  
18 to an Indian child under s. 48.41 (2) (e) may also move for relief from the judgment  
19 under s. 48.028 (5) (c) or (6). Motions under this subsection or s. 48.028 (5) (c) or (6)  
20 and appeals to the court of appeals shall be the exclusive remedies for such a parent  
21 to obtain a new hearing in a termination of parental rights proceeding.

<sup>(the parent's attorney)</sup>  
NOTE: This SECTION requires a parent to sign a petition for rehearing or motion for  
postdisposition relief from a CHIPS adjudication, paternity adjudication, or TPR order,  
whether or not the parent is represented, and retains the requirement under current law  
that ~~counsel~~ sign the petition or motion if the parent is represented.

22 SECTION 27. 48.977 (2) (a) of the statutes is amended to read:

↑  
AR arceus

1 48.977 (2) (a) That the child has been adjudged to be in need of protection or  
2 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), ~~or~~  
3 (11m), or (14) or 938.13 (4) and been placed, or continued in a placement, outside of  
4 his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,  
5 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged  
6 and placement of the child in the home of a guardian under this section has been  
7 recommended under s. 48.33 (1) or 938.33 (1).

8 **SECTION 28.** <sup>AR dragonite</sup> 48.977 (4) (b) 3. of the statutes is amended to read:

9 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection  
10 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), ~~or~~  
11 (11m), or (14) or 938.13 (4) and the dates on which the child has been placed, or  
12 continued in a placement, outside of his or her home pursuant to one or more court  
13 orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365  
14 or, if the child has been so adjudged, but not so placed, the date of the report under  
15 s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person  
16 is recommended.

NOTE: SECTIONS <sup>use AR arceus</sup> 28 and <sup>use AR dragonite</sup> 29 allow the juvenile court to appoint a guardian for <sup>use AR pikachu</sup> a child in need of protection or services based on the new ground created under SECTION 27.

17 **SECTION 29.** 809.10 (1) (b) 7. of the statutes is created to read:

18 809.10 (1) (b) 7. Notwithstanding s. 802.05 (1), if the appellant is a parent  
19 appealing an order or judgment under s. 48.43, the parent's signature, and the  
20 parent's attorney of record's signature, if the parent is represented.

NOTE: This SECTION requires a parent to sign a notice of appeal from a TPR order, whether or not the parent is represented, and retains the requirement under current law that <sup>the parent's attorney</sup> counsel sign the notice if the parent is represented.

21 **SECTION 30.** 809.107 (2) (bm) 6. of the statutes is created to read:

LPS: the section numbers will have increased so these ARs will show as 28+29, etc. They're 27+28 in this printed copy.

1 809.107 (2) (bm) 6. Notwithstanding s. 802.05 (1), if the appellant is the parent,  
2 the parent's signature, and the parent's attorney of record's signature, if the parent  
3 is represented. *the parent's attorney*

NOTE: This SECTION requires a parent to sign a notice of intent to appeal a TPR order, whether or not the parent is represented, and retains the requirement under current law that ~~counsel~~ sign the notice if the parent is represented.

4 **SECTION 31.** 938.21 (5) (b) 3. of the statutes is amended to read:

5 938.21 (5) (b) 3. If the court finds that any of the circumstances specified in s.  
6 938.355 (2d) (b) 1. to 4. applies with respect to a parent, ~~the order shall include~~ a  
7 determination that the county department or agency primarily responsible for  
8 providing services under the custody order is not required to make reasonable efforts  
9 with respect to the parent to make it possible for the juvenile to return safely to his  
10 or her home, unless the court determines or has determined under a prior order that  
11 such efforts would be in the best interests of the juvenile. *TPC*

NOTE: This SECTION specifies that at a ~~temporary physical custody~~ hearing, for a juvenile alleged to be in need of protection or services, a court must determine that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

12 **SECTION 32.** 938.32 (1) (c) 2. of the statutes is amended to read:

13 938.32 (1) (c) 2. If the court finds that any of the circumstances specified in s.  
14 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the consent decree shall  
15 include a determination that the county department or agency primarily responsible  
16 for providing services under the consent decree is not required to make reasonable  
17 efforts with respect to the parent to make it possible for the juvenile to return safely  
18 to his or her home, unless the court determines or has determined under a prior order  
19 that such efforts would be in the best interests of the juvenile.

*(JIPS) → (JIPS) the juvenile*  
NOTE: This SECTION specifies that in a consent decree for a juvenile alleged to be in need of protection or services a court must determine that an agency is not required make reasonable efforts to return a juvenile safely home when the statutorily defined

egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

1        **SECTION 33.** 938.355 (2) (b) 6r. ~~and (2d) (b) (intro.)~~ of the statutes ~~are~~ <sup>is</sup> amended  
2        to read:

3        938.355 (2) (b) 6r. If the court finds that any of the circumstances under sub.

4        (2d) (b) 1. to 4. applies with respect to a parent, ~~the order shall include~~ a  
5        determination that the county department or agency primarily responsible for  
6        providing services under the court order is not required to make reasonable efforts  
7        with respect to the parent to make it possible for the juvenile to return safely to his  
8        or her home, unless the court determines or has determined under a prior order that  
9        such efforts would be in the best interests of the juvenile. <sup>the juvenile</sup>

NOTE: This SECTION specifies that in the written contents of a juvenile in need of protection or services (JIPS) dispositional order, a court must determine that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

10       938.355 (2d) (b) (intro.) ~~Notwithstanding sub. (2) (b) 6., the court is not required to~~ <sup>shall</sup>  
11       include in a dispositional order a ~~finding as to whether~~ determination that the county  
12       department or the agency primarily responsible for providing services under a court  
13       order ~~has made~~ is not required to make reasonable efforts with respect to a parent  
14       of a juvenile to prevent the removal of the juvenile from the home, ~~while assuring~~  
15       that the juvenile's health and safety are the paramount concerns, or, if applicable,  
16       a finding as to whether the county department or agency has made ~~at~~ <sup>or</sup> reasonable  
17       ~~efforts with respect to a parent of a juvenile~~ to achieve the permanency goal of  
18       returning the juvenile safely to his or her home, unless the court determines or has  
19       determined under a prior order that such efforts would be in the best interests of the  
20       juvenile, if the court finds any of the following: <sup>the juvenile</sup>

NOTE: This SECTION specifies that in a JIPS dispositional order a court must determine that an agency ~~was~~ <sup>is</sup> not required to make reasonable efforts to prevent a

SECT.  
AM  
938.355 (2d)  
(b) (intro.)

juvenile's removal or return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determined that such efforts ~~were~~ in the best interests of the juvenile.

AR charizard

1 **SECTION 34.** 938.355 (2d) (c) of the statutes is renumbered 938.355 (2d) (c)  
2 (intro.) and amended to read:

do all of the following: 1. Hold

3 938.355 (2d) (c) (intro.) If the court finds that any of the circumstances under  
4 par. (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under  
5 s. 938.38 (4m) within 30 days after the date of that finding to determine the  
6 permanency goal and, if applicable, any concurrent permanency goals for the  
7 juvenile. do all of the following:

plan

8 **SECTION 35.** 938.355 (2d) (c) 1. ~~and~~ of the statutes ~~are~~ created to read:

9 938.355 (2d) (c) 1. Include in the order a determination that the person or  
10 agency primarily responsible for providing services to the juvenile is not required to  
11 make reasonable efforts with respect to the parent to make it possible for the juvenile  
12 to return safely to his or her home, unless the court determines that such efforts  
13 would be in the best interests of the juvenile.

14 2. Hold a hearing under s. 938.38 (4m) within 30 days after the date of that  
15 finding to determine the permanency goal and, if applicable, any concurrent  
16 permanency goals for the juvenile.

use AR charizard → 35

use AR newtwo

the juvenile

LRB: The section #s will increase. AR's are as marked.

NOTE: SECTIONS 34 and 35 specify that a court must include in the JIPS dispositional order a determination that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

17 **SECTION 36.** 938.357 (2v) (a) 3. of the statutes is amended to read:

18 938.357 (2v) (a) 3. If the court finds that any of the circumstances under s.

19 938.355 (2d) (b) 1. to 4. applies with respect to a parent, ~~the order shall include~~ a  
20 determination that the agency primarily responsible for providing services under the



would be  
 1 change in placement order is not required to make reasonable efforts with respect  
 2 to the parent to make it possible for the juvenile to return safely to his or her home,  
 3 unless the court determines or has determined under a prior order that such efforts  
 4 were in the best interests of the juvenile.

NOTE: This <sup>the juvenile</sup> SECTION specifies that in a <sup>JIPS</sup> ~~change in placement from a JIPS~~ <sup>JIPS</sup> ~~dispositional order~~ a court must determine that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, would be unless the court determined that such efforts were in the best interests of the juvenile.

5 **SECTION 37. 938.365 (2m) (a) 2. of the statutes is amended to read:**

6 938.365 (2m) (a) 2. If the court finds that any of the circumstances under s.  
 7 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the order shall include a  
 8 determination that the person or agency primarily responsible for providing services  
 9 to the juvenile is not required to make reasonable efforts with respect to the parent  
 10 to make it possible for the juvenile to return safely to his or her home, unless the court  
 11 determines or has determined under a prior order that such efforts would be in the  
 12 best interests of the juvenile.

NOTE: This SECTION specifies that in <sup>extension</sup> ~~extending~~ a JIPS <sup>the juvenile</sup> ~~dispositional~~ order, a court must determine that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

13 **SECTION 38. Initial applicability.**

14 (1) PATERNAL PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS.  
 15 The treatment of section 48.423 (1) of the statutes first applies to a termination of  
 16 parental rights proceeding for which the petition is filed on the effective date of this  
 17 subsection.

NOTE: This <sup>subsection</sup> ~~Section~~ provides that an alleged father who had not otherwise declared or established a relationship with the child may not further participate in a TPR proceeding if the petition is filed after the draft takes effect as law.

First applies to a <sup>TPR</sup> ~~TPR~~ proceeding for which the petition is filed on the effective date of the bill

CHILD IN NEED OF PROTECTION OR SERVICES GROUND.

<sup>Treatment</sup> (2) ~~The creation~~ of section 48.13 (14) of the statutes first applies to a petition filed under section 48.13 of the statutes on the effective date of this subsection after a parent has been given notice under section 48.427 (7) (a) and (b) of the statutes.

NOTE: This ~~Section~~ <sup>subsection</sup> specifies that the new CHIPS ground based on a parent's prior TPR within ~~3~~ <sup>three</sup> years applies to a new CHIPS petition if the CHIPS petition is filed after the parent has been informed at a TPR that the TPR could be a CHIPS ground for a child born within the next ~~3~~ <sup>three</sup> years <sup>proceeding</sup>.

(3) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. The treatment of section 48.415 (2) (a), <sup>2.b. and</sup> (3) (a), (5) (a), (8), (9) <sup>still</sup> ~~(a)(c), and~~ <sup>STP (do not delete)</sup> (9m) (a) of the statutes first applies to court orders required to contain the notice under section 48.356 (2) or 938.356 (2) of the statutes granted on the effective date of this subsection.

NOTE: This ~~Section~~ <sup>subsection</sup> specifies that each of the ~~revised~~ <sup>revised in the bill</sup> TPR grounds first apply after a parent has been informed ~~in writing~~ <sup>in a written order</sup> of any grounds for TPR that may be applicable when a child or juvenile has been removed from the home under a dispositional order or its extension or revision. <sup>placing the child outside the home</sup>

(4) WAIVER BY PARENT OF RIGHT TO COUNSEL BY FAILURE TO APPEAR. The treatment of section 48.23 (2) (c) 2. of the statutes first applies to a parent who is ordered on the effective date of this subsection to appear in person at a hearing in a contested adoption or an involuntary termination of parental rights proceeding.

NOTE: This ~~Section~~ <sup>subsection</sup> specifies that a waiver of counsel from a parent's failure to appear applies in a CHIPS or TPR proceeding if the petition is filed after the draft takes effect as law. <sup>on the effective date of the bill</sup> <sup>the provisions of the bill providing for</sup> <sup>first</sup> <sup>for</sup> <sup>by</sup> <sup>to a parent who is ordered to appear at the effective date of the bill</sup>

(5) POSTDISPOSITIONAL RELIEF PETITION OR NOTICE OF APPEAL; PARENT'S SIGNATURE REQUIRED. The treatment of sections 48.46 (1), (1m), and (2), 809.10 (1) (b) 7., and 809.107 (2) (bm) 6. of the statutes first apply to a parent who files a petition for rehearing, motion for postdisposition relief, notice of intent to appeal, or notice of appeal on the effective date of this subsection.

NOTE: This ~~Section~~ <sup>subsection</sup> specifies that a parent's signature on a postdisposition motion, petition, notice of intent to appeal, or notice of appeal is required for such document filed after the draft takes effect as law. <sup>on the effective date of the bill</sup> <sup>the provisions of the bill requiring</sup> <sup>first apply to</sup>

**SECTION 39. Effective date.**

(1) This act takes effect on the first day of the 6th month beginning after publication.

NOTE: This SECTION delays the effective date of the ~~act's provisions~~ until the 6th month following publication, ~~if enacted~~

(END)

## Malaise, Gordon









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**From:** Kelley, Margit  
**Sent:** Tuesday, March 12, 2013 9:41 AM  
**To:** Malaise, Gordon  
**Cc:** Schmidt, Melissa  
**Subject:** FW: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights  
**Attachments:** 13-1630/P2.pdf

Hi Gordon,

I have some questions and suggestions for the editing of LRB—1630/P2, but I first want to say that your corrections and revisions immensely improved the draft! You caught some things that we hadn't, and you made other great improvements!

Melissa is also reviewing the draft, so she may have additional comments or questions.

-  On page 1, line 13, should "within the last 3 years" be changed to "within 3 years prior to the child's birth"?
-  On page 4, in the second full paragraph I'm wondering if it would be better to remove the last phrase beginning with "or if the father has been convicted...", because the CHIPS notice exception only allows a physician's statement, and not proof by conviction. Then, the next paragraph could be revised to say that "This bill eliminates the requirements for a physician's statement from those notice exceptions and instead.... Under the bill, the notice exceptions do not apply...." These changes seem a little more accurate to me.
-  On page 6, in the note after line 8, should "within the last three years" be changed to "within three years prior to the child's birth"? Also, the last sentence seems repetitious of the description already given in the note, and could be deleted.
-  On page 8, line 2, could "par. (b) or (d)" be changed to "this section" or "this subsection"? Otherwise, if the provisions for counsel under draft LRB 1629/1 are enacted "(bm)" would need to be inserted on that line.
-  On page 10, line 13, it looks like "is" should have a strikethrough.
-  On pages 10 and 11, the notes for Sections 7, 8, and 10 are almost identical in their reference to a "CHIPS dispositional order". I remember in the previous draft that we struggled with how to distinguish this, and I think in the part that is now Section 7 we referred to the "written contents of a CHIPS dispositional order", in an attempt to distinguish those sections. I'm not sure that this is even worth spending any time on trying to distinguish between the sections, or if it's even really possible to do in a way that would be meaningful! Do you have any thoughts on this? This same question would apply to the "JIPS dispositional order" notes on pages 23 and 24, Sections 34, 35, and 37.
-  On page 14, line 1, should "as defined in s. 51.01 (2)" have a strikethrough, as approved treatment facilities are defined in s. 48.02 (1s), Stats.? If it's kept, it does hold the parallel sentence structure.
-  On page 15, line 1, should "the laws of this state," be inserted after "under"? Otherwise it seems that the standard for proof by a final judgment of conviction or other evidence only applies to federal law or the laws of any other state.

• On page 15, it looks like the note after line 20 is meant to apply to both Sections 18 and 19. Seems like it might be easiest just to move the first sentence into a separate note for Section 18, after line 14. Then the word "also" could be removed from the second sentence that stays with Section 19.

• On page 26, line 7, the reference to "(10) (a)" might be confusing and could probably just be removed. The new TPR ground based on a prior TPR within 3 years before birth and subsequent CHIPS finding isn't available until the parent has been warned in the first TPR, which is specified in sub. (2) at the top of that page. This has different requirements for its initial applicability than the treatment of the other TPR grounds that are in sub. (3).

Hope these questions and comments make sense!

Margit Kelley  
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[Margit.Kelley@legis.wi.gov](mailto:Margit.Kelley@legis.wi.gov)

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**From:** LRB.Legal  
**Sent:** Thursday, March 07, 2013 2:38 PM  
**To:** Kelley, Margit  
**Subject:** Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

**Draft Requester: Legislative Council - JLC**

**Following is the PDF version of draft LRB -1630/P2.**